

Washington State Auditor's Office
Whistleblower Report

**Office of Minority and Women's
Business Enterprises**

Report No. 1007244

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WASHINGTON
BRIAN SONNTAG
STATE AUDITOR



**Washington State Auditor
Brian Sonntag**

February 14, 2012

Cathy Canorro, Director
Office of Minority and Women's Business Enterprises

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 12-009 at the Office of Minority and Women's Business Enterprises.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Investigator Dayna Whitson at (360) 725-5356, Special Investigations Manager Kim Hurley at (360) 725-5352 or Director of Special Investigations Jim Brittain at (360) 902-0372.

Sincerely,

BRIAN SONNTAG, CGFM
WASHINGTON STATE AUDITOR

BS:DW

cc: Governor Chris Gregoire
Melanie de Leon, Executive Director, Executive Ethics Board

Whistleblower Investigation Report

State of Washington Office of Minority and Women's Business Enterprises Thurston County

ABOUT THE INVESTIGATION

Our Office received a whistleblower assertion that the Director of the Office of Minority and Women's Business Enterprises granted a sole source contract to a personal friend.

State law has specific requirements regarding competitively solicited and sole source contracts. "Sole source" means the professional or technical expertise needed is of such a unique nature that only one contractor can clearly and justifiably provide the service. The justification is to be based on the uniqueness of the service or its sole availability at the location required.

State law also requires agencies to file sole source contracts with Office of Financial Management (OFM) and make them available for public inspection at least 10 working days prior to the proposed starting date of the contract.

This contract was awarded during the Governor-imposed freeze on personal service contracts in 2010.

ASSERTION

The Director of the Office of Minority and Women's Business Enterprises used her position to secure special privileges for a friend.

RESULTS

We found reasonable cause to believe an improper governmental action occurred.

On December 20, 2010 the Director signed a sole-source personal services contract for \$65,000. The contractor was to analyze the Office's organization and provide to the Director recommendations for changes and assist in follow-through once they were approved.

We found that OFM originally disapproved a request that the contract be exempted from the freeze, but later approved it. In an interview, an OFM representative stated the agency approved the second request because it provided more detail that convinced it of the critical necessity for the contract. OFM is not responsible for reviewing the contractor selected for the work.

The Director posted the advertisement on November 23, 2010, exactly 10 working days prior to the contract start date, but required potential bidders to submit proposals

detailing their ability to complete the scope of work by the end of the next day, November 24, 2010.

We asked the Director why she only allowed two days and she stated that legally, she only needed to post it for one day. We asked if she felt the intent of the 10-day posting law was to give potential bidders an opportunity to have their qualifications considered and she said she consulted a personal friend employed at another state agency who is knowledgeable of state contracting laws and he recommended only posting it for one day. We asked if any potential contractors contacted her during the two days and she said three expressed interest. We obtained the documentation to support these contacts from the Director.

We communicated with representatives from the three companies. One said the company did not understand why it was not considered because it felt well-qualified for the statement of work because he had adequate experience in management consulting. The second said he did not remember the Agency being very responsive to him. The third complimented the Agency and Director, but said she did not submit a proposal because she did not have enough time within the two-day period. When we told the Director what company representatives had told us, she said that she did not think any of them could adequately perform the work.

A witness stated that when the subject was being considered for Acting Director, she told the Governor's Office that she would not accept that position unless she could bring on a particular individual as a consultant. She entered into the contract about a month later, and then became the Director in October 2011. The Director also stated that the contractor and her had been friends for many years and participated together in social activities.

We asked the Director if she recalled making the statement. She said she may have said something like that, but it was taken out of context. She also stated she had first met the contractor more than 30 years ago and acknowledged participating in social activities with the contractor.

We found reasonable cause to believe an improper governmental action occurred. The Director entered into a contract that was not a proper sole source contract and should have been subject to competitive solicitation. The Director stated to witnesses that she was interested in awarding the contract to a specific individual prior to notifying other potential bidders. The Director also gave interested parties only two days to submit written proposals showing their qualifications to do the work outlined in the contract. When potential bidders contacted her within the two days, serious consideration was not given to them to determine whether they might be capable of performing the work at a lower cost to the state.

We will forward our conclusions to the Executive Ethics Board to take action as it determines necessary.

AGENCY'S PLAN OF RESOLUTION

We would like to thank the staff of the State Auditor's Office for the opportunity to respond to the findings of the audit and for their work on the complaint.

The Office of Minority and Women's Business Enterprises (OMWBE) entered into the sole source consultant contract when OMWBE was undergoing severe organizational changes and stresses. The newly appointed Acting Director, Cathy Canorro determined that the agency had a critical need for immediate assistance to assess its operations and recommend improvements in core areas; i.e., budget, human resources, customer service, and delivery of services pursuant to federal requirements. There was no one within OMWBE with the necessary skills or time to recruit, hire, and train new staff. Ms. Canorro identified a highly qualified and experienced outside consultant she knew as the only person who had the necessary prior executive management experience with state government, knowledge of labor and workforce issues, budget and legislative expertise, and demonstrated ability to help turn around agencies in crisis. When Ms. Canorro was appointed Acting Director, the Governor's Office recognized OMWBE's critical need for immediate assistance and agreed with initiating the procurement process to hire this consultant.

OMWBE recognized the need to comply with OFM and statutory requirements for entering into a sole source personal services contract (an exception to competitive bidding) and did so. These requirements included:

- Obtaining necessary approval from OFM for an exemption from a temporary statutory "freeze" on personal service contracts,*
- Posting and advertising the contract prior to award for a minimum of one day,*
- Filing the contract with OFM a minimum of 10 working days prior to the proposed start date, and*
- Receiving contract approval from OFM prior to performance of the contract.*

The award of the sole source contract was based on the agency's critical needs and the consultant's unique qualifications to meet those needs; nothing else.

OMWBE appreciates the State Auditor's staff follow up with people who inquired about the sole source contract during the posting period. Although there were no formal responses to the posting and OMWBE determined that none of the three people inquiring were qualified to provide the necessary services, it appears there may still be some people who are confused about the process. Ms. Canorro had already followed up with personal phone calls to two of the individuals but as a result of this report she will contact all three people to respond to any concerns they may have.

For additional information regarding the critical need for this sole source contract and the consultant's qualifications, OMWBE has attached a copy of the Justification: Sole Source Contract form submitted to OFM. Copies are also available at OMWBE.

STATE AUDITOR'S OFFICE REMARKS

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

Whistleblower Investigation Criteria

State of Washington Office of Minority and Women's Business Enterprises Thurston County

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 42.52.070 - Special Privileges.

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

RCW 39.29.006(12) – Definitions (effective until August 24, 2011).

“Sole source” means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required.

RCW 39.29.018 - Sole Source Contracts (effective until October 1, 2011).

(1) Sole source contracts shall be filed with the office of financial management and made available for public inspection at least ten working days prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the office of financial management when the contract is filed, and must include evidence that the agency posted the contract opportunity on the state's common vendor registration and bid notification system. For sole source contracts of twenty thousand dollars or more, documented justification shall also include evidence that the agency attempted to identify potential consultants by advertising through statewide or regional newspapers.

(2) The office of financial management shall approve sole source contracts of twenty thousand dollars or more before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of twenty thousand dollars or more are reasonable.

RCW 39.29.011 - Competitive solicitation required-Exceptions.

All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts;
- (3) Contract amendments;

(4) Contracts between a consultant and an agency of less than twenty thousand dollars. However, contracts of five thousand dollars or greater but less than ten thousand dollars shall have documented evidence of competition. Contracts of ten thousand dollars or greater, but less than twenty thousand dollars, shall have documented evidence of competition, which must include agency posting of the contract opportunity on the state's common vendor registration and bid notification system. Agencies shall not structure contracts to evade these requirements; and...

2010 Laws of Washington, Chapter 3, Section 602 states in part (effective July 10, 2010 through June 30, 2011):

(1) From the effective date of this section until July 1, 2011, state agencies of the legislative, executive, and judicial branches shall not enter into any contracts or other agreements entered into for the acquisition of personal services not related to an emergency or other catastrophic event that requires government action to protect life or public safety...

(3) Exceptions to this section may be granted under section 605 of this act.

2010 Laws of Washington, Chapter 3, Section 605 states in part (effective July 10, 2010 through June 30, 2011):

EXCEPTIONS. (1) Exceptions to sections 601 through 604 of this act may be granted for the critically necessary work of an agency as provided in this section.

(2) For agencies of the executive branch, the exceptions shall be subject to approval by the director of financial management or the director's designee. For agencies of the judicial branch, the exceptions shall be subject to approval of the chief justice of the supreme court. For the house of representatives and the senate, the exceptions shall be subject to approval of the chief clerk of the house of representatives and the secretary of the senate, respectively, under the direction of the senate committee on facilities and operations and the executive rules committee of the house of representatives. For other legislative agencies, the exceptions shall be subject to approval of both the chief clerk of the house of representative and the secretary of the senate under the direction of the senate committee on facilities and operations and the executive rules committee of the house of representatives...

2010 Laws of Washington, Chapter 3, Section 607 states:

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately, except for sections 601 through 605 of this act which take effect thirty days after the effective date of this act.

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